

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DOC #: \_\_\_\_\_  
DATE FILED: 09/29/2017

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| MORRIS MCALLISTER,             | : |                       |
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| Plaintiff,                     | : | 1:16-cv-9885-GHW-RLE  |
|                                | : |                       |
| -v-                            | : |                       |
|                                | : |                       |
| QUICK PARK and TEAMSTERS LOCAL | : | <u>ORDER ADOPTING</u> |
| 917,                           | : | <u>REPORT AND</u>     |
|                                | : | <u>RECOMMENDATION</u> |
|                                | : |                       |
| Defendant.                     | : |                       |
|                                | : |                       |
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GREGORY H. WOODS, United States District Judge:

On November 28, 2016, Plaintiff Morris McAllister filed this action *pro se* against Quick Park and Teamsters Local 917 (“Local 917”) in the Supreme Court of New York, New York County, alleging that Quick Park had breached the collective bargaining agreement and that Local 917 violated its duty of fair representation with respect to the October 2012 termination of his employment. Local 917’s Mem. of Law, Dkt. No. 29. On December 22, 2016, Local 917 removed the action to this Court pursuant to 28 U.S.C. §§ 1441 and 1446. Dkt. No. 1.

On January 11, 2017, the Court referred this matter to Magistrate Judge Ellis for general pre-trial, Dkt. No. 10, and, on January 18, 2017, for a Report and Recommendation on Quick Park’s anticipated motion to dismiss, Dkt. No. 17. On February 8, 2017, Plaintiff filed a motion to remand the matter based on a “new fact” related to the bargaining agreement. Dkt. No. 20. On February 13, 2017, the Court referred this matter to Magistrate Judge Ellis for a Report and Recommendation on Plaintiff’s motion to remand. Dkt. No. 21. On February 23, 2017, Local 917 filed its opposition to Plaintiff’s motion to remand and a cross-motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, asserting collateral estoppel. Dkt. No. 27. On

February 24, 2017, the Court referred the matter to Magistrate Judge Ellis for a Report and Recommendation on Local 917's cross-motion for judgment on the pleadings. Dkt. No. 36. On March 3, 2017, Quick Park filed a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim upon which relief may be granted. Dkt. No. 37. On April 7, 2017, Plaintiff responded to Quick Park's motion to dismiss. Dkt. No. 43. Plaintiff did not respond to Local 917's cross-motion for judgment on the pleadings.

Judge Ellis issued his Report and Recommendation ("R&R") on September 11, 2017, recommending that Plaintiff's motion for remand be denied and that Local 917's cross-motion for judgment on the pleadings and Quick Park's motion to dismiss with prejudice be granted. R&R at 16, Dkt. No. 48. The R&R advised that "the Parties shall have fourteen (14) days after being served with a copy" of the R&R "to file written objections." R&R at 16. No party has lodged objections to the R&R, and the time to do so has expired.


In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). A district court must "determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3); *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). If no timely objections are made, however, "a district court need only satisfy itself that there is no clear error on the face of the record." *King v. Greiner*, No. 02 Civ. 5810, 2009 WL 2001439, at \*4 (S.D.N.Y. July 8, 2009) (citation omitted); *see also Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

After reviewing the record, the Court finds no clear error in Judge Ellis' well-reasoned and careful R&R. Accordingly, the Court adopts the R&R in its entirety, and, for the reasons set forth therein, denies Plaintiff's motion for remand and grants Local 917's cross-motion for judgment on the pleadings and Quick Park's motion to dismiss with prejudice.

The Clerk of Court is directed to mail a copy of this order to Plaintiff by certified mail, to terminate the motion pending at Dkt. No. 37, and to close this case.

SO ORDERED.

Dated: September 29, 2017  
New York, New York

  
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GREGORY H. WOODS  
United States District Judge